

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of RCC Minnesota,
Inc. and Wireless Alliance, LLC, for
Designation as an Eligible Telecommunications
Carrier (ETC) Under 47 U.S.C. § 214(e)(2)

ISSUE DATE: October 15, 2003

DOCKET NO. PT-6182,6181/M-02-1503

ORDER GRANTING APPROVAL AND
REQUIRING MODIFICATIONS TO
COMPLIANCE FILING

PROCEDURAL HISTORY

On September 10, 2002, RCC Minnesota, Inc. and Wireless Alliance, LLC, together as the affiliates of Rural Cellular Corporation providing service in Minnesota (collectively RCC) submitted a Petition for Designation as an Eligible Telecommunications Carrier (ETC).¹ RCC requested that the Commission designate it as eligible to receive all available support from the federal Universal Service Fund (USF), including support for rural, insular and high-cost areas and low income customers.

On July 31, 2003, the Commission issued its ORDER GRANTING CONDITIONAL APPROVAL AND REQUIRING ADDITIONAL FILINGS. The Order granted conditional approval to the Company's application for designation as an ETC and directed that the Company provide additional information and documents.

On August 7, 2003, RCC made its compliance filing. On September 2 the Commission received comments from Citizens Telecommunications Company of Minnesota (Citizens) and the Department of Commerce (DOC). On September 10 RCC filed reply comments.

The matter came before the Commission on September 25, 2003.

¹ Pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (The Act), 47 U.S.C. § 214 (e)(2) and Section 54.201 of Federal Communications Commission's (FCC) rules, 47 C.F.R. § 54.201.

FINDINGS AND CONCLUSIONS

I. The Compliance Filing

RCC's ETC application received preliminary approval based on a finding that RCC had made a credible showing of its ability and intention to provide a high quality, affordable universal service offering throughout its proposed service area, and otherwise fulfill the requirements for ETC designation. Final approval was conditioned upon Commission review and approval of a compliance filing, which was to include the following items:

- (a) information typically gathered from ETCs in the annual certifications,
- (b) information on rates, terms and conditions applicable to the basic unbundled universal service offering (BUUSO), including customer premise equipment options and charges,
- (c) an advertising plan,
- (d) a tariff with terms and rates for the BUUSO, with Lifeline and Link-Up² and other services which may be added to a universal service offering,
- (e) a customer service agreement with customer service and dispute resolution policies, network maintenance policies with procedures for resolving service interruptions and any customer remedies, billing and payment and deposit policies, and
- (f) a list of the Company's federal obligations regarding its service area.

On August 6, 2003, RCC made its compliance filing and requested the Commission grant final approval of its petition for ETC designation. RCC filed the following pursuant to the Commission's Order:

A. Information Typically Gathered from ETCs in the Annual Certifications

RCC submitted an affidavit from the Vice-President of Rural Cellular Corporation stating that RCC would use all federal high-cost support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

B. Information on Rates, Terms, and Conditions Applicable to the BUUSO, Including Customer Premise Equipment Options and Charges

RCC proposed a monthly fee for BUUSO of \$14.99, with a one time \$30.00 service activation fee. RCC disclosed that it may require a deposit of up to \$200, depending on a potential subscriber's credit history. RCC will waive the deposit if a customer elects toll blocking. RCC also listed its charges for long distance and various enhanced features.

² Federal programs providing financial assistance to low income telephone subscribers.

Regarding Customer Premises Equipment (CPE), RCC proposed to offer Telular CPE wireless loop equipment for sale at \$360.00 or at \$299 with a 12 month service agreement. In addition, RCC would lease the wireless local loop equipment for \$5 per month with a 12-month lease.

C. An Advertising Plan

RCC submitted a sample of its proposed advertisement and a schedule for running the ad in newspapers of general distribution covering RCC's designated service areas in Minnesota. According to RCC, the ad sizes may vary depending on publication, but generally will be two columns wide by four inches high.

RCC also proposed advertising the availability of Lifeline and Link-Up on customer bills periodically and also on radio spots and occasional live remotes. It will also promote the availability of the BUUSO rate plan, Lifeline and Link-Up on its site on the World Wide Web.

D. A Tariff with Terms and Rates for the Basic Unbundled Universal Service Offering (BUUSO), with Lifeline and Linkup and Other Services which may be Added to a Basic Unbundled Universal Service Offering

RCC submitted a proposed tariff for the BUUSO plan.

E. A Customer Service Agreement with Customer Service and Dispute Resolution Policies, Network Maintenance Policies with Procedures for Resolving Service Interruptions and any Customer Remedies, and Billing, Payment and Deposit Policies

RCC submitted a proposed customer service agreement.

F. A List of the Company's Federal Obligations Regarding its Service Area

RCC states that a new entrant, once designated an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request. RCC committed to do the following, upon receipt of a customer request for service under the BUUSO rate plan:

Upon receipt of a customer request for service under the BUUSO rate plan, (a) in areas where RCC has facilities such that it is able to supply the requested service to that customer's home (if an individual customer) or office (if a business customer) without additional facilities beyond the wireless local loop unit, at the time the request is made, RCC shall initiate service, in most cases on the same day that customer requests service to begin, but in no event more than thirty (30) days from the date the customer requests service to begin; and (b) in areas where RCC does not have facilities to supply the requested service to that customer's home (if an individual customer) or office (if a business customer) at the time the request is

made, then RCC shall, within thirty (30) days, evaluate the obstacles to providing the requested phone service to that customer and provide the customer with the available options for the provision of such service and the estimated time frame for implementing such options.

RCC also agreed to record instances in which RCC is unable to provide BUUSO within 30 days of the time of request.

II. Position of the Parties on RCC's Compliance Filing

A. The DOC

The DOC stated that RCC has fulfilled its requirement to provide 1) information typically gathered from ETC's in annual certifications; 2) an adequate advertising plan; 3) a list of the Company's federal obligations regarding its service area. It had the following comments on RCC's filing:

1. Procedure for Changing the Tariff, Lease Agreement and Service Agreement

The DOC stated that RCC did not provide procedures for amending or updating the Company's tariff. The DOC recommended that RCC be required to add an additional section, Section H, *Filing of Notification to Commission and Department* to its tariff. Section H, as recommended by the DOC, is as follows:

Changes in Prices or Terms and Conditions of Offering

The Company should be required to provide written notice to the Commission and to the Department of Commerce immediately upon any change to price or rate (including changes in the lease price or changes in terms and conditions for the wireless loop equipment), or to other terms and conditions of its universal service offering.

Withdrawal of offering to a geographical area or group of customers

The Company should be required to provide written notice to the Commission and to the Department prior to the withdrawal of its BUUSO offering or any portion thereof.

Commission Investigation

Upon a complaint, a petition from the Department, or on the Commission's own motion, the Commission may investigate any change to the RCC Tariff, Lease Agreement, or Service Agreement. In its review, the

Commission should consider the effect of the change on service quality, availability and affordability. After investigation, the Commission may find that the change is not consistent with the Commission decision to approve RCC's federal ETC status, and rescind the change or revoke RCC's federal ETC status.

2. Record Keeping

The DOC stated that RCC has committed to record the instances in which a potential customer requests service (either an individual customer or a business customer) and RCC is unable to provide service by way of the BUUSO rate plan and the wireless local loop unit within thirty days of the customer's request. However, the DOC recommended that in addition to this the Company should establish a process for tracking customer complaints or disputes related to the service quality of its BUUSO offering, and establish procedures for making such records available to the Commission upon request.

3. Customer Service Agreement

The DOC stated that RCC submitted a proposed customer service agreement which included provisions for dispute resolution, network maintenance, notice prior to disconnection of service, and billing and payment policies, among other things. The customer service agreement noted that the Company would not disconnect service on a Sunday or a national legal holiday. The DOC recommended that the Company revise the customer service agreement to indicate that the Company would not disconnect on Friday or Saturday as well. The DOC argued that this was necessary because customers disconnected on Friday or Saturday have no opportunity for redress the following day.

4. Service to Customers Near Ely, Minnesota

The DOC stated that the Ely region was within RCC's requested designated service area and noted the Commission's open docket regarding three families in the Ely area who have petitioned the Commission for affordable telephone service.³ The DOC recommended that the Commission, when it grants RCC final approval, direct RCC to develop a proposal and cost estimates to serve these petitioners via the BUUSO. It argued that this would be consistent with RCC's federal obligation and its tariff.

B. Citizens

Citizens stated that several areas where RCC has requested ETC status are areas that are without commercial electric power. Citizens argued that RCC will be providing service through conventional cellular offerings, which use a .6-watt handheld phone, and its BUUSO service,

³ *In the Matter of Notice of Petition for Wireline Telephone Service*, Docket No. P407/EM-03-699 (Ely docket).

which will use a 3-watt wireless local loop unit that simulates a dial tone and provides the ability to connect to an external antenna. However, Citizens argued that RCC has not identified how it intends to provide service to customers in these areas. Citizens recommended that the Commission direct RCC to address this in its tariff.

Citizens also argued that RCC should be held to the same service quality standards that apply to all other Minnesota ETCs regarding the provisioning of service to customers requesting service in the area where it is designated as an ETC. Further, it argued that RCC should have the same duties and obligations to provide service to customers in the Ely area as Citizens, including undertaking an analysis of the costs of providing such service.

C. Reply of RCC

RCC argued that the additional requirements suggested by the DOC and Citizens are unwarranted and unnecessary and RCC requested that the Commission reject them.

Regarding the service quality standards that Citizens requested the Commission impose on RCC, RCC argued that the standards applicable to Citizens are a condition of Citizens being certified to provide local exchange service in Minnesota. It argued that those standards have no bearing on a carrier's qualifications for ETC status and should not be imposed by the Commission.

Further, RCC indicated that if a customer requests service and the absence of electrical power is a barrier to providing that service, RCC will address the issue at that time. It argued that this issue bears no relationship to requirements for ETC designation.

RCC argued that it should not be required to provide cost estimates in the Ely docket as a condition of ETC service because RCC is not yet eligible to receive federal universal service funds, it is unclear when, if ever, that RCC will be designated an ETC to serve the area for which petitioners in the Ely docket are requesting service, and the petitioners have not requested service from RCC.

On the issue of RCC modifying its service agreement to prohibit the disconnection of service on a Friday or a Saturday, RCC argued that it provides customer service twenty four hours a day, seven days a week; therefore, any customer that is disconnected has an opportunity for immediate redress. For this reason the modification should not be required.

Finally, RCC acknowledged that many of the recommendations of the DOC were consistent with the Commission's Order in the Midwest Wireless docket.⁴ However, RCC argued that they were unsupported and should be rejected.

⁴ *In the Matter of the Petition of Midwest Wireless Communications, LLC, for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, Docket No. PT-6153/AM-02-686, ORDER GRANTING APPROVAL AND REQUIRING FURTHER FILING (August 5, 2003).

III. Commission Action

The Commission finds that the compliance filings of RCC, with the modifications to be addressed below, satisfy the concerns that prompted the need for the compliance filing. Therefore, the Commission will approve the compliance filing (with modifications) and grant final approval to RCC's designation as an ETC under 47 U.S.C. § 214(e)(2).

The Commission finds the DOC's proposal to require RCC to establish a process to track customer complaints related to BUUSO service quality and make that information available to the Commission is reasonable and will provide the Commission with a basis to monitor the quality of RCC's BUUSO plan.

Similarly, the Commission finds the DOC's recommendation that RCC include in its tariff provisions for dealing with updates and amendments to its tariff, service agreement and wireless local loop lease agreement reasonable. Requiring the Company to give notice to both the Commission and the DOC of changes to price, rate, or other terms and conditions of the universal service offering and requiring RCC to provide notice prior to the withdrawal of its BUUSO offering are reasonable requirements to enable the Commission to further monitor the plan for continuing compliance with ETC requirements.

Further, to enable the Commission to remain current and review the Company's actions to meet its obligation to serve, the Commission will also require RCC to provide quarterly reports of any unserved customer requests and a description of how the Company is working to provide service to any unserved customer.

Since in this Order the Commission is granting approval to RCC's request for ETC designation in its requested service area, which includes the Ely region, the Commission will require RCC to develop a proposal and cost estimates to serve the petitioners in the Ely docket. This is in accordance with RCC's obligations as an ETC provider.

Consistent with its Order in the Midwest Wireless docket, and recognizing that RCC provides twenty-four hour customer service, the Commission will decline to expand the days on which RCC will be prohibited from disconnecting service.

Finally, the Commission clarifies that RCC's obligation to advertise and serve begins upon the date of this Order.

The Commission will so Order.

ORDER

1. RCC is designated as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e)(2).

2. The Compliance filing of RCC is approved with the modifications set forth below.

- A. RCC shall establish, 30 days from the date of this Order, a process to track customer complaints or disputes related to the BUUSO service quality, and procedures for making such records available to the Commission upon request.
- B. RCC shall add Section H to the tariff to deal with service provision updates and amendments to the RCC tariff, service agreement and wireless local loop lease agreement, as follows:

H. Filing of Notification to Commission and Department

Changes in Prices or Terms and Conditions of Offering

The Company shall provide written notice to the Commission and to the Department of Commerce immediately upon any change to price or rate (including changes in the lease price or changes in terms and conditions for the wireless loop equipment), or to other terms and conditions of its universal service offering.

Withdrawal of offering to a geographical area or group of customers

The Company shall provide written notice to the Commission and to the Department prior to the withdrawal of its BUUSO offering or any portion thereof.

Commission Investigation

Upon a complaint, a petition from the Department, or on the Commission's own motion, the Commission may investigate any change to the RCC Tariff, Lease Agreement, or Service Agreement. In its review, the Commission should consider the effect of the change on service quality, availability and affordability. After investigation, the Commission may find that the change is not consistent with the Commission decision to approve RCC's federal ETC status, and rescind the change or revoke RCC's federal ETC status.

- C. RCC shall develop a proposal and cost estimates to serve the Ely petitioners via the BUUSO.
- D. RCC shall provide the Commission with a quarterly report of any unserved customer requests, and a description of how the Company is working to provide service to any unserved customer. The Commission can initiate an investigation and revoke RCC's ETC designation upon a finding of failure to fulfill its obligation to serve.

3. The obligation of RCC to advertise and serve shall begin upon designation (i.e. the date of this Order).
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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